## BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON
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2	STATE OF WASHINGTON		
3	VICTOR KEITH MYERS,		
4	Appellant,	Case No. RULE-01-0038	
5	v.	ORDER OF THE BOARD FOLLOWING	
6	UNIVERSITY OF WASHINGTON,	HEARING ON EXCEPTIONS TO THE DETERMINATIONS OF THE DIRECTOR	
7	Respondent.		
8			
9	<b>Hearing on Exceptions.</b> Pursuant to RCW 41.64	1.060 and WAC 358-01-040, this appeal came on	
10	for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair. The hearing was		
11	held on April 17, 2002, at the University of Washington in Seattle, Washington. GERALD L.		
12	MORGEN, Vice Chair, reviewed the record and I	participated in the decision in this matter. RENÉ	
13	EWING, Member did not participate in the hearing	g or in the decision in this matter.	
14	<b>Appearances.</b> Appellant Victor Myers was pres	ent and was represented by Julie Sakahara. Area	
15	Representative for the Washington Federation of State Employees. Ron Boerger represented		
16	Respondent University of Washington (UW).		
17	Respondent ourversity of washington (ow).		
18	<b>Background.</b> By letter dated March 13, 2001	, Appellant requested remedial action from the	
19	Department of Personnel, pursuant to WAC 251-1	2-600,. Appellant was a temporary employee and	
20	asked that he be awarded permanent status becaus	e he had worked in a temporary position for more	
21	than 1050 hours in a 12 consecutive month period	since his original hire date.	
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23	The Director's designee, Kari Lade, conducted a	n investigation to determine whether Appellant's	
24	temporary appointment was consistent with the higher education rules (Title 251 WAC). Ms. Lade		
25	forwarded the results of her investigation to Te	eri Thompson, Classification and Compensation	
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1	Program Director. On November 28, 2001, Ms. Thompson issued a determination denying
2	Appellant's request.
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4	In accordance with WAC 251-04-040(6), Appellant's original date of hire is October 1, 1989. The
5	record before the Board establishes that from October 1991 through March 14, 2001, Appellant's
6	pattern of work consisted of working as a UW temporary custodial employee from October through
7	April, working as a contract employee doing custodial work at the UW from May thru September,
8	and then resuming work as a temporary custodial employee for the UW in October. Respondent
9	monitored Appellant's hours of work as a temporary UW employee to ensure that he did not exceed
10	1050 hours in any 12 consecutive month period.
11	
12	In spite of Respondent's efforts to monitor Appellant's hours of temporary work, between October
13	1998 and April 1999, Appellant worked 1078.5 hours, thereby exceeding the 1050 hour threshold.
14	The Director's determination concluded:
15	The director's authority to grant remedial action is discretionary and is not required
16	by WAC 251-12-600 if a temporary employee works over 1050 hours. While respondent did work Mr. Myers over the 1050 hour limit in the twelve consecutive
17	month period starting from October 1, 1998, the institution overall has done well to maintain Mr. Myers' temporary employment within the required limit.
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19	On December 24, 2001, Appellant filed exceptions to the Director's determination with the
20	Personnel Appeals Board. Appellant's exceptions are the subject of this proceeding.
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22	Summary of Appellant's Argument. Appellant worked as a custodian. He argues that
23	Respondent did not put forth a good faith effort to comply with the temporary appointment rules.
24	Appellant contends that Respondent scheduled him to work the maximum hours allowed under the
25	temporary rules and then, when he neared the 1050 hour threshold, the university switched him to a
26	general employment agency where he continued to perform custodial worked at the UW. Appellant

argues that Respondent did not make a good faith effort to comply with the temporary appointment rules, but rather, made a good faith effort to circumvent the rules. Appellant asks that he be given permanent status proportionate to the actual hours that he was employed to work at the UW.

Summary of Respondent's Argument. Respondent admits that Appellant exceeded the 1050 hour threshold but asserts that it was an oversight. Respondent contends that when the university learned of the oversight, Appellant's hours were ended immediately. Respondent asserts that the rules allow the university to work a temporary employee indefinitely for six months with the following six months off, provided the hours worked do not exceed 1050 during any 12 consecutive month period. Respondent acknowledges that Appellant was a good worker, but concedes that they discontinued his employment when he filed his appeal.

**Primary Issue.** Whether the Director's determination to deny Appellant remedial action should be affirmed.

Decision of the Board. It is undisputed that Appellant's hours of temporary work exceeded 1050 between October 1998 and April 1999. Respondent was clearly aware of its duty and responsibility to monitor Appellant's hours of work and to comply with the provisions of the temporary appointment rules. For the most part, they successfully did so. However, we are alarmed by the recurring pattern of Respondent's employment practices that kept Appellant working as a "temporary" custodian at the university for over 10 years. Respondent intentionally manipulated Appellant's hours of work between temporary and contract employment to avoid conferring him with the permanent status and benefits provided to classified state employees. While prior to April 1999, Respondent may have complied with the letter of the rules, the applicable rules do not contain an exception or excuse for Respondent based on substantial compliance. More so, the intent of the rules and the highest standards of state human resource practices lead to inclusion in the civil service with exclusion being the exception within narrowly defined parameters.

1	Based on the facts and circumstances of this case, we find that Appellant should have permanent
2	status and be entitled to benefits as of April 23, 1999, when his hours exceeded 1050. Furthermore,
3	because of Appellant's long-term pattern of employment at the university, his periodic increment
4	date should be April 23, 1999. However, under these unique circumstances, his seniority and
5	periodic increment dates should not be adjusted to exclude the time he worked as a contract
6	employee at the university.
7 8 9	<b>Conclusion.</b> Appellant's appeal on exceptions should be granted and the determination of the Director, dated November 28, 2001, should be modified.
10	ORDER
11	NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal on exceptions by Appellant is
12	granted and the Director's determination, dated November 28, 2001, is modified as follows:
13 14 15	<ol> <li>Appellant is granted permanent status effective April 23,1999;</li> <li>Appellant is entitled to all employee rights and benefits including sick leave, vacation leave accrual, retirement and OASDI credit, effective April 23, 1999; and</li> <li>Neither Appellant's seniority nor periodic increment dates will be adjusted to exclude the time he worked as a contract employee at the university.</li> </ol>
17 18	DATED this, 2002.
19	WASHINGTON STATE PERSONNEL APPEALS BOARD
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22	Walter T. Hubbard, Chair
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24	Gerald L. Morgen, Vice, Chair
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